

121 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

The Electric Plant Board of the City of Paducah,
Kentucky

Project No. 12911-001

ORDER DENYING MOTION TO SUPPLEMENT REQUEST FOR REHEARING
AND REQUEST FOR LEAVE TO RESPOND

(Issued October 26, 2007)

1. The Electric Plant Board of the City of Paducah (Paducah), Kentucky has filed (1) a motion to supplement Paducah's September 17, 2007 request for rehearing in these proceedings and (2) a request for leave to respond to a September 28, 2007 answer filed by the City of Wadsworth, Ohio (Wadsworth). We deny both motions.

2. The current matters at issue involve the denial by Commission staff of Paducah's request to use the traditional hydropower licensing process and for various waivers, in order to allow Paducah to file a license application in competition with Wadsworth's application for a preliminary permit to study the proposed R.C. Byrd Project.¹ By letter issued August 16, 2007, staff denied the requests, and Paducah timely sought rehearing. On September 13, 2007, Paducah filed a motion for extension of time to file a license application and alternative request for stay of the application deadline.

3. On October 18, 2007, the Commission issued an order denying Paducah's request for rehearing and its related motion.²

4. Shortly before the Commission acted, Paducah filed a motion seeking permission to supplement its rehearing request or, in the alternative, for the Commission to take official notice of recent developments. Paducah also filed a request for leave to respond to an answer filed by Wadsworth to Paducah's September 13 motion.

5. Paducah asks to supplement its request for rehearing, or for us to take official notice, in order to assert that our staff has failed to comply with our regulations by not initiating the integrated licensing process with respect to Paducah's proposed project.

¹ For a detailed discussion of this history of this proceeding, see *The Electric Plant Board of the City of Paducah, Kentucky*, 121 FERC ¶ 61,051 (2007).

² *Id.*

Our regulations provide that staff will issue a notice of commencement of proceeding and environmental scoping document within 60 days of receipt by the Commission of a notification of intent to file a license application.³ Paducah filed its notice of intent on July 30, 2007. Staff has not issued a notice of commencement of the proceeding and scoping document, which in theory it would have done by September 28, 2007.

6. First, we deny Paducah's motion to supplement its request for rehearing. We do not permit supplements or amendments to requests for rehearing filed, as is the case here, more than 30 days after the date of the order at issue.⁴ Paducah has not demonstrated why we should deviate from this policy.⁵

7. We nonetheless note that, given the ongoing debate about the propriety of Paducah's actions in these proceedings, it was appropriate for our staff to withhold action until we had resolved the issues before us. Had we granted Paducah's request for rehearing, staff would then have processed Paducah's application under the traditional licensing process, rather than the integrated process, so that any actions staff had taken under the integrated process would have been wasted. Moreover, Paducah cannot fairly argue that a delay in commencing the integrated process has harmed it, since it states that the integrated process "cannot be completed within the 120-day timeframe established by the [notice setting the deadline for license applications in this proceeding]."⁶ Thus, by Paducah's own admission, the commencement by staff of the integrated process would have been a meaningless act.

8. In addition, the matters that Paducah seeks to raise now are not relevant to its request for rehearing. The request for rehearing asked us to reverse Commission staff's conclusion, explained in its August 16, 2007 letter, that Paducah should not be allowed to use the traditional licensing process and obtain waivers of large portions of regulations regarding pre-filing consultation. The proffered supplement does not provide any argument or fact with respect to those issues, but rather complains that staff has not moved forward with the pre-filing process for the integrated process. This is a separate matter, and cannot properly be raised on rehearing of staff's August 16, 2007 letter.

³ See 18 C.F.R. § 5.8 (2007).

⁴ See, e.g., *Michigan Electric Transmission Company, LLC*, 116 FERC ¶ 61,164 at P 6 (2006); *Commonwealth Edison Company, et al.*, 115 FERC ¶ 61,133 at P 22 and n.15 (2006).

⁵ Paducah cannot overcome our policy by styling its motion as, in the alternative, a motion for us to take official notice. Giving the motion an alternative title does not make it proper.

⁶ Motion to supplement at 3-4.

9. We also deny the request for leave to respond to Wadsworth's motion. Rule 213 of our Rules of Practice and Procedure states that "[a]n answer may not be made to . . . an answer . . . unless otherwise ordered by the decisional authority."⁷ As Paducah points out, we do accept otherwise barred answers where good cause is shown for doing so, as when the answers provide significant new legal or factual information that assists in developing a complete record. Here, however, Paducah has not demonstrated good cause, but rather is simply attempting to reargue matters at issue between itself and Wadsworth. The proffered material is not necessary for us to compile a complete record here. As we explained in the September 18 order, where we permitted Paducah to respond to an answer by Wadsworth "we do not take our regulations prohibiting answers lightly and will not be inclined to allow further iterative pleadings."⁸

10. We also note that Paducah's filings were both made only three days before the Commission's October open meeting, and several days after we had issued a Government in the Sunshine Act notice, which included Paducah's proposed project as a matter scheduled for consideration at the open meeting. We do not favor parties filing pleadings that merely recount earlier arguments or raise extraneous arguments after issuance of the Sunshine Act notice in an effort to get in an untimely last word before Commission action, because such pleadings may disrupt the orderly consideration of matters before the Commission.

The Commission orders:

(A) The motion to supplement request for rehearing or, in the alternative, request for official notice, filed by the Electric Plant Board of the City of Paducah, Kentucky on October 15, 2007 is denied.

(B) The request for leave to respond filed by the Electric Plant Board of the City of Paducah, Kentucky on October 15, 2007 is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ 18 C.F.R. § 385.213(a)(2) (2007). Paducah states that Rule 213 "does not provide for responses to answers." Request for leave at 1. This is misleading. In fact, the rule, as quoted above, generally prohibits such pleadings.

⁸ 121 FERC ¶ 61,051 at P 16 (2007).